

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

10TH GEAR LLC, G4 INNOVATIONS LLC,  
LITTLE DIESEL TRANSPORTATION, ZEKE  
AND LIZZIE, LLC, VISION AG, LLC, L Z S  
CEREMONIAL TRAILS, INC., MGM  
TRANSPORT, LLC, MATTSON'S LAWN &  
GARDEN, INC., CRC TRANSPORT, LLC,  
and TRPVS, INC. on behalf of themselves and  
all others similarly situated,

CASE NO. 2:23-cv-1933-RSL

## **STIPULATED PROTECTIVE ORDER AND ORDER**

**Plaintiffs,**

VS.

PACCAR INC a Delaware corporation

Defendant.

## **1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public  
2 disclosure and use extends only to the limited information or items that are entitled to confidential  
3 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
4 confidential information under seal.

5 2. **“CONFIDENTIAL” MATERIAL**

6 “Confidential” material shall include the following documents and tangible things  
7 produced or otherwise exchanged:

- 8 ➤ Confidential submissions to the Environmental Protection Agency (“EPA”),  
9 California Air Resources Board (“CARB”), and other United States governing or  
10 regulatory bodies;
- 11 ➤ Confidential communications with EPA, CARB, or United States governing or  
12 regulatory bodies regarding confidential submissions, emissions defect reports, and  
13 evaluation of corrective actions;
- 14 ➤ Internal communications regarding confidential submissions to EPA, CARB, or  
15 United States governing or regulatory bodies, emission defect reports, and  
16 evaluation of corrective actions;
- 17 ➤ Confidential business information regarding warranty claim processing and  
18 resolution;
- 19 ➤ Confidential business information regarding proprietary design, manufacturing,  
20 and testing processes;
- 21 ➤ Confidential and proprietary internal communications regarding marketing and  
22 sales strategies and practices;
- 23 ➤ Confidential and proprietary financial performance and cost documents;
- 24 ➤ Confidential engine control programming code, data, and strategies.

25 3. **SCOPE**

26 The protections conferred by this agreement cover not only confidential material (as

1 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
 2 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
 3 conversations, or presentations by parties or their counsel that might reveal confidential material.

4 However, the protections conferred by this agreement do not cover information that is in  
 5 the public domain or becomes part of the public domain through trial or otherwise.

6 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

7       4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
 8 or produced by another party or by a non-party in connection with this case only for prosecuting,  
 9 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
 10 categories of persons and under the conditions described in this agreement. Confidential material  
 11 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
 12 that access is limited to the persons authorized under this agreement.

13       4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
 14 by the court or permitted in writing by the designating party, a receiving party may disclose any  
 15 confidential material only to:

16           (a) the receiving party’s counsel of record in this action, as well as employees  
 17 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

18           (b) the officers, directors, and employees (including in house counsel) of the  
 19 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 20 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
 21 designated;

22           (c) experts and consultants to whom disclosure is reasonably necessary for this  
 23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24           (d) the court, court personnel, and court reporters and their staff;

25           (e) copy or imaging services retained by counsel to assist in the duplication of  
 26 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately  
2 return all originals and copies of any confidential material;

3                         (f)        during their depositions, witnesses in the action to whom disclosure is  
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
7 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
8 under this agreement;

9                         (g)        the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information.

11                  4.3        Filing Confidential Material. Before filing confidential material or discussing or  
12 referencing such material in court filings, the filing party shall confer with the designating party,  
13 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
14 remove the confidential designation, whether the document can be redacted, or whether a motion  
15 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
16 designating party must identify the basis for sealing the specific confidential information at issue,  
17 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
18 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
19 the standards that will be applied when a party seeks permission from the court to file material  
20 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
21 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
22 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
23 the strong presumption of public access to the Court’s files.

24                  5.        DESIGNATING PROTECTED MATERIAL

25                  5.1        Exercise of Restraint and Care in Designating Material for Protection. Each party  
26 or non-party that designates information or items for protection under this agreement must take

1 care to limit any such designation to specific material that qualifies under the appropriate  
2 standards. The designating party must designate for protection only those parts of material,  
3 documents, items, or oral or written communications that qualify, so that other portions of the  
4 material, documents, items, or communications for which protection is not warranted are not swept  
5 unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
7 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
8 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
9 and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it designated for  
11 protection do not qualify for protection, the designating party must promptly notify all other parties  
12 that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
14 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or  
15 ordered, disclosure and discovery material that qualifies for protection under this agreement must  
16 be clearly so designated before or when the material is disclosed or produced.

17 (a) Information in documentary form: (e.g., paper or electronic documents and  
18 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
19 the designating party must affix the word "10TH GEAR - CONFIDENTIAL" to each page that  
20 contains confidential material. If only a portion or portions of the material on a page qualifies for  
21 protection, the producing party also must clearly identify the protected portion(s) (e.g., by making  
22 appropriate markings in the margins).

23 (b) Testimony given in deposition or in other pretrial proceedings: Any party  
24 or non-party may, within thirty days after receiving the transcript of the deposition or other pretrial  
25 proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or  
26 non-party desires to protect confidential information at trial, the issue should be addressed during

1 the pre-trial conference.

2                   (c)     Other tangible items: the producing party must affix in a prominent place  
3 on the exterior of the container or containers in which the information or item is stored the word  
4 “10TH GEAR - CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
5 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

6       5.3     Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
7 information or items does not, standing alone, waive the designating party’s right to secure  
8 protection under this agreement for such material. Upon correction of a designation, the receiving  
9 party must make reasonable efforts to ensure that the material is treated in accordance with the  
10 provisions of this agreement.

11 6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

12       6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
13 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

18       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
19 regarding confidential designations without court involvement. Any motion regarding confidential  
20 designations or for a protective order must include a certification, in the motion or in a declaration  
21 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
22 affected parties in an effort to resolve the dispute without court action. The certification must list  
23 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
24 to-face meeting or a telephone conference.

25       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
26 intervention, the designating party may file and serve a motion to retain confidentiality under Local

1 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
3 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
4 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
5 the material in question as confidential until the court rules on the challenge.

6 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
7 **LITIGATION**

8 If a party is served with a subpoena or a court order issued in other litigation that compels  
9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
10 must:

11 (a) promptly notify the designating party in writing and include a copy of the  
12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to  
14 issue in the other litigation that some or all of the material covered by the subpoena or order is  
15 subject to this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
17 the designating party whose confidential material may be affected.

18 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
20 material to any person or in any circumstance not authorized under this agreement, the receiving  
21 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
22 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
23 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
24 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
25 Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

3       When a producing party gives notice to receiving parties that certain inadvertently  
4 produced material is subject to a claim of privilege or other protection, the obligations of the  
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
6 is not intended to modify whatever procedure may be established in an e-discovery order or  
7 agreement that provides for production without prior privilege review. The parties agree to the  
8 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10       Within 60 days after the termination of this action, including all appeals, each receiving  
11 party must return all confidential material to the producing party, including all copies, extracts and  
12 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

13       Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
14 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
16 product, even if such materials contain confidential material.

17       The confidentiality obligations imposed by this agreement shall remain in effect until a  
18 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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Dated: April 19, 2024

Respectfully submitted,

4 TERRELL MARSHALL LAW GROUP PLLC  
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*Attorneys for Plaintiffs*

18 Dated: April 19, 2024

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*Attorneys for Defendant PACCAR Inc*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED  
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3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
4 documents, electronically stored information (ESI) or information, whether inadvertent or  
5 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
7 documents, including the attorney-client privilege, attorney work-product protection, or any other  
8 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum  
9 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
10 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
11 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
12 segregation of privileged and/or protected information before production. Information produced  
13 in discovery that is protected as privileged or work product shall be immediately returned to the  
14 producing party.

15 Dated this 23rd day of April, 2024.

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17 Robert S. Lasnik  
18 United States District Judge  
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EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of 10th Gear LLC, et al. v. PACCAR Inc, No. 2:23-cv-1933-RSL (W.D. Wash.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date:

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature: